another's money to make a loan and takes the mortgage in his own name, a resulting trust arises in favor of the one furnishing the money. A similar result has been reached under the title theory. *Tillman* v. *Murell,* 120 Ala. 239. On the other hand, it has been decided that where A's money has been used to pay off a second payment of a purchase money mortgage, no resulting trust arises, even in a title theory state, and such a case has been distinguished by the courts on the ground that a resulting trust must arise at the time the purchase is made and cannot arise subsequently. *Jacksonville Bank* v. *Beasley,* 159 Ill. 120. But the distinction seems unsound since the facts of legal importance are those which exist when the mortgage is discharged rather than those which led to its creation. 20 COL. L. REV. 103. If the facts of the principal case are approached from the point of view of subrogation, the conclusion reached would seem to be correct, since the facts fail to show an agreement to reconvey or an interest in the payor liable to foreclosure; JONES ON MORTGAGES, [7th Ed.], No. 874, *et seq.* Conceding that the debt is the principal thing, it has been held that a mere volunteer who pays the debt of another may require the debtor to ratify or repudiate the payment, in which case he may sue in his own name or in a court of equity as equitable assignee; *Crumlish Administrator* v. *Central Improvement Co.,* 38 W. Va. 390. It is submitted that the doctrine of resulting trust should not require a fee simple to support its creation. If the decision in the principal case can be justified at all, it must be on the ground that the doctrine of resulting trust had its origin under conditions which do not exist at the present time, and therefore should be limited in every possible way. See 20 HARV. L. REV. 555. At any rate it is clear that if a resulting trust did arise, it should be enforced only as to 19/28 of the mortgage lien and not as to an undivided interest in the land itself since the redemption had not been by the payor's money.

WORKMEN'S COMPENSATION—INJURY TO WATCHMAN ACCIDENTALLY SHOT IS ONE ARISING OUT OF EMPLOYMENT.—A night watchman, employed by a company which furnished subscribers with protection against burglary, was killed when he was accidentally shot by a police officer then in the pursuit of burglars, though they had not entered the building which the watchman was protecting. *Held,* (two justices dissenting,) that this was an injury "arising out of employment." *Heidemann* v. *American District Telegraph Co. et al.,* (N. Y., 1921), 130 N. E. 302.

In Workmen's Compensation cases there are almost invariably the questions: (1) Did the injury result from an "accident"? (As to this see 19 MICH. L. REV. 638). (2) Was it received "in the course of employment"? (3) Was it one "arising out of employment"? The answer to the second question really depends on whether the employee was acting within the scope of his employment. See references *infra.* As to the third question the prevailing view makes the test one of causation—was there any casual connection between the employment and the injury? See *McNicol's Case,* 215 Mass. 497; *Dennis* v. *A. J. White & Co.,* [1917] A. C., 479; 12 MICH. L. REV. 614,

688; 14 MICH. L. REV. 525, 526; 15 MICH. L. REV. 92, 606; 16 MICH. L. REV. 179, 462; 17 MICH. L. REV. 195, 280; 18 MICH. L. REV. 162; 19 MICH. L. REV. 232, 456, 458, 577, 669. That the injury in this case is within the law, seems hardly questionable, since as the court so clearly points out, though the burglars did not enter the building which the deceased was protecting, yet his very calling multiplied the chance that he would be near when danger came, and in multiplying the chance, exposure to the risk was increased. He was brought by the conditions of his work within the zone of special danger, and the purpose of the law was to compensate for this, as the court said in *Matter of Leonbruno* v. *Champlain Silk Mills,* 229 N. Y. 470. In *Chicago Dry Kiln Co.* v. *Industrial Board,* 276 Ill. 556, a night watchman was allowed to recover under the Workmen's Compensation Law for injury received in a fight with a trespasser. In *Ohio Building Vault Co.* v. *Industrial Board,* 277 Ill. 96, the death of a night watchman while on duty by being struck on the head was prima facie evidence of assault and arose out of employment so that there might be recovery.

WILLS—CONSTRUCTION OF REPUGNANT CLAUSES—INTENT.—A testator devised and bequeathed certain real and personal property to a woman, to be used and enjoyed by her during her lifetime, with full powers of alienation without limitation or restriction, and upon her decease without issue to revert back to the estate of the testator. In a bill for a construction of the will, *held,* (two justices dissenting), the devisee took an estate in fee, in spite of the direction for disposition at her death. *Gibson* v. *Gibson,* (Mich., 1921), 181 N. W. 41.

In his dissenting opinion, Justice Sharpe cites two Michigan cases which he regards as controlling,—*Robinson* v. *Finch,* 116 Mich. 180, and *Cary* v. *Toles,* 210 Mich. 30. In each of these cases a devise absolute in form was held to be limited to a life estate by a subsequent provision for a gift over on the death of the first taker without issue. The sole question is, of course, which clause in the will shall control. No rule of construction is better settled than that the intention of the testator, as expressed in the will, shall prevail. *King* v. *Melling,* 1 Vent. 231; *Summit* v. *Yount,* 109 Ind. 506; *Lane* v. *Vick,* 3 How. 464. For this purpose the will must be considered as a whole. *Jackson* v. *Hoover,* 26 Ind. 511. But when provisions of the will are plainly repugnant, the testator's intent, the "pole star" of testamentary construction, has not enabled the courts to render decisions that can be easily harmonized. As between two repugnant clauses, some courts have ruled that the latter of the two should prevail on the theory that what the testator writes last in his "last will." *Sherrat* v. *Bentley,* 2 M. & K., 149; *Hamlin* v. *U. S. Express Co.,* 107 Ill. 443; *Hendershot* v. *Shields,* 42 N. J. Eq. 317; JARMAN, WILLS, 6th Ed. 565. In deeds the prior clause controls. *Cutler* v. *Tufts,* 3 Pick. 272. This highly technical rule has been severely criticised, and is never applied, it seems, except as a last resort. SCHOULER, WILLS, par. 474. See 18 MICH. L. REV. 785. The mere position of clauses or words should not be conclusive as against the intention as manifested by the whole instru-